

INTERVENTION



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Arizona Corporation Commission

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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF VALLEY PIONEERS WATER
COMPANY, INC. TO AMEND THE USE OF
THE PROCEEDS FROM LONG-TERM
DEBT.

DOCKET NO. W-02033A-03-0379

**APPLICATION OF PHELPS DODGE
BAGDAD, INC. FOR LEAVE TO
INTERVENE**

Pursuant to A.A.C. R14-3-105, Phelps Dodge Bagdad, Inc. ("PDBI") hereby applies to the Arizona Corporation Commission (the "Commission") for an order granting PDBI leave to intervene in the above-captioned proceeding. PDBI is a mining company who, in addition to owning mining and related facilities in Bagdad, Arizona, owns a well field and water distribution system in Golden Valley, Arizona. Portions of the PDBI Golden Valley system are presently encumbered by a lease to Equatorial Mineral Park, Inc. ("EMP") for use in EMP's mining operations, which are presently on standby. PDBI has negotiated the sale of the Golden Valley system to the applicant in this docket, Valley Pioneers Water Company ("VPWC"), subject to the interest of EMP.

VPWC is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §40-250 and 40-251 conducting business in the Golden Valley area. VPWC has negotiated the purchase of the Golden Valley well field and water distribution system intending to rely primarily on funds borrowed from the United States Department of Agriculture Rural Utility Commission ("RUC").

1 VWPC is faced with increasing customer demand and limited well production capacity
2 and in an effort to alleviate anticipated limitations on VPWC's ability to service customers,
3 VPWC sought and secured approval from the Commission in 2001 to construct a new well, a 12-
4 inch diameter transmission main and associated distribution system using funds borrowed from
5 RUC. See Commission Decision No. 64173, docketed October 30, 2001. Thereafter, VPWC
6 became aware of PDBI's desire to sell its Golden Valley system and the two companies entered
7 into purchase negotiations, which were consummated via a Purchase and Sale Agreement, dated
8 May 21, 2003 (the "Agreement"). Pursuant to the Agreement, the close of escrow is contingent
9 upon VWPC's receipt of Commission approval authorizing VWPC to use its borrowed funds to
10 purchase PDBI's Golden Valley system rather than the previously authorized purpose.

11 To that end, VPWC filed the instant application seeking an amendment of Commission
12 Decision No. 64173 regarding the use of the loan proceeds. The Utilities Division Staff ("Staff")
13 issued its Staff Report concerning the VPWC application on July 18, 2003, recommending
14 approval of an amendment to Decision No. 64173 with conditions. Unfortunately, if the
15 Commission adopts the conditions recommended by Staff, the Agreement will fail.

16 The failure of the Agreement will not result from PDBI's withdrawal of its offer to sell the
17 Golden Valley system to VPWC, as erroneously suggested by Staff (Staff Report at 4); rather the
18 Agreement will fail because, as mentioned above, the sale of the system is subject to EMP's
19 rights and, as PDBI can explain to the Commission, EMP is unwilling to accept substantial
20 modifications to its existing leasehold interest. Indeed, PDBI, VWPC and EMP have negotiated
21 for over a year to come to acceptable terms governing VWPC's purchase of the Golden Valley
22 system. Those negotiations culminated in the Agreement and EMP has no financial or other
23 incentive to make additional concessions, notwithstanding Staff's unilaterally held belief that
24 such concessions are in the public interest. Thus, the Agreement, in its present form, will either
25 close escrow or fail and failure will be a certainty if Staff's recommended conditions are adopted.

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1 If the Agreement fails, VPWC will be forced to revert to its prior plan to drill a new well, which, as
2 Staff recognizes has inherent risks that are not present relative to the purchase of an existing system
3 with proven production capabilities. See Staff Report at 3 and 5. This inherent and unnecessary risk
4 will be borne by VPWC's existing customer base, which PDBI suggests is not in the public interest.

5 Based on the foregoing, it is clear that PDBI has an interest in the subject matter of this
6 docket and that such interest will be substantially impacted by a decision. Indeed, even a cursory
7 review of the Staff Report reflects the nature of PDBI's interest and Staff repeatedly refers to
8 PDBI as if it were already a party to this proceeding. In addition, PDBI can provide additional
9 information to the Commission about the Golden Valley water system it seeks to sell to VPWC as
10 well as critical information regarding the reasons adoption of Staff's conditions will ensure that
11 VPWC is unable to purchase that system. It follows, therefore, that PDBI's participation in these
12 proceedings will not broaden the issues or unduly delay the proceedings, except upon leave of the
13 Commission first had and received. Accordingly, PDBI respectfully requests that the
14 Commission grant its Application for Leave to Intervene in this matter.

15 Following intervention, PDBI requests that all communications in connection with the above
16 captioned proceedings be directed to:

17 Jay Shapiro
18 Dawn Meidinger
19 FENNEMORE CRAIG, P.C.
20 3003 North Central Avenue
Suite 2600
Phoenix, Arizona 85012
(602) 916-5000

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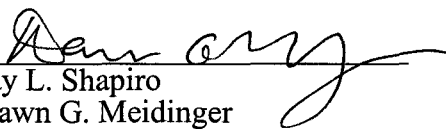
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RESPECTFULLY SUBMITTED this 22nd day of July, 2003.

FENNEMORE CRAIG, P.C.

By 
Jay L. Shapiro
Dawn G. Meidinger
3003 North Central Avenue
Suite 2600
Phoenix, AZ 85012
Attorneys for PDBI

ORIGINAL and 13 copies of the foregoing
were hand-delivered for filing this 22nd day of
July, 2003, to:

Docket Control
ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, Arizona 85007

COPY of the foregoing was hand-delivered
this 22nd day of July, 2003, to:

Lyn Farmer, Chief Administrative Law Judge
Hearing Division
ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, Arizona 85007

Christopher C. Kempley, Chief Counsel
ARIZONA CORPORATION COMMISSION
Legal Division
1200 West Washington
Phoenix, Arizona 85007

Ernest G. Johnson
Director, Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, Arizona 85007

1 COPY of the foregoing was mailed
2 this 22nd day of July, 2003, to:

3 John Clayton
4 Valley Pioneers Water Company, Inc.
5 3482 North McNeal Road
6 Golden Valley, Arizona 86413

7 Jeff Goldberg, Esq.
8 Bruno, Brooks & Goldberg
9 730 East Beale
10 Kingman, Arizona 86401

11 By: Mary House
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